

AMENDED IN SENATE APRIL 19, 2005

**SENATE BILL**

**No. 323**

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**Introduced by Senator Migden**

February 16, 2005

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An act to amend Sections 6485 and 6514 of the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

SB 323, as amended, Migden. Sales tax fraud.

The Sales and Use Tax Law imposes a tax on the gross receipts from the sale in this state of, or the storage, use, or other consumption in this state of, tangible personal property. The State Board of Equalization administers the application of, and the collection of, the taxes imposed by that law. Existing law imposes penalties for failure to file returns and for failure to remit the total taxes owed, including a 25% penalty if a determination is made that the failure to file the return or the failure to remit the tax is due to fraud or an intent to evade taxes.

This bill would provide for a rebuttable presumption, *affecting the burden of evidence production*, of fraud or an intent to evade taxes, if a determination is made that any portion of the taxes, for which a return is not filed or that are not remitted, represent sales taxes that were knowingly collected by a retailer as sales tax reimbursement. This bill would also provide that, if this determination is made, the 25% penalty shall be automatically imposed.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

SECTION 1. Section 6485 of the Revenue and Taxation Code is amended to read:

6485. (a) If any part of the deficiency for which a deficiency determination is made is due to fraud or an intent to evade this part or authorized rules and regulations, a penalty of 25 per cent of the amount of the determination shall be added thereto.

(b) If a determination is made that any part of a deficiency determination represents sales tax reimbursement, as defined in Section 1656.1 of the Civil Code, that was knowingly collected by a retailer from customers as sales tax reimbursement and was not timely remitted to the board, there shall be a rebuttable presumption *affecting the burden of producing evidence* that the deficiency is due to fraud or an intent to evade the taxes imposed under this part. If this determination is made, the penalty required by subdivision (a) shall be imposed as a jeopardy determination in accordance with Article 4 (commencing with Section 6536).

SEC. 2. Section 6514 of the Revenue and Taxation Code is amended to read:

6514. (a) If the failure of any person to file a return is due to fraud or an intent to evade this part or rules and regulations, a penalty of 25 per cent of the amount required to be paid by the person, exclusive of penalties, shall be added thereto in addition to the 10 per cent penalty provided in Section 6511.

(b) If a determination is made that any sales tax liability for which the person failed to file a return represents sales tax reimbursement, as defined in Section 1656.1 of the Civil Code, that was knowingly collected by a retailer from customers as sales tax reimbursement and was not timely remitted to the board, there shall be a rebuttable presumption *affecting the burden of producing evidence* that the failure to file the return is due to fraud or an intent to evade the taxes imposed under this part. If this determination is made, the penalty required by subdivision (a) shall be imposed as a jeopardy determination in accordance with Article 4 (commencing with Section 6536).